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In The

Supreme Court of the United States

October Term, 1960

No._____

CRUM DINKINS, MRS. ROBERT S. LAMPLEY, and GEORGE PENTON,
As Members of the Board of Registrars of Montgomery County, Alabama,

PETITIONERS,

v.

WILLIAM P. ROGERS, As Attorney General of the United States, (Robert F. Kennedy, successor in office),

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above captioned case on January 23, 1961.

OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Alabama is reported at 187 F. Supp. 848, 5 Race Relations Law Reporter 766 and is printed in Appendix A hereto, *infra*, pp. 7-8. The opinion of the Circuit Court of Appeals is unreported and is printed in Appendix B, hereto, *infra*, p. 9-10.

JURISDICTION

The Judgment of the Circuit Court of Appeals (R. 187, Appendix B., *infra*, p. 9-10) was entered on January 23, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether Title III of the Civil Rights Act of 1960 is constitutional.

2. Whether Section 301 of Title III of the Civil Rights Act of 1960 is so vague, uncertain, and indefinite as to be incapable of legal enforcement.

3. Whether the demand made by the Attorney General of the United States (R. 4 and 5) exceeded the authority given him by Title III of the Civil Rights Act of 1960.

4. Whether in a proceeding by the Attorney General of the United States under Title III of the Civil Rights Act of 1960, the Attorney General can be compelled to disclose the names and addresses of persons having knowledge of the relevant facts which form the basis of the demand and application for relief thereunder.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions and Statutes involved are:
Article 1, Section 9, Clause 3.

Amendment IV.

Amendment V.

Amendment VI.

Amendment X.

Amendment XV.

Title III of the Civil Rights Act of 1960, section 301 (P.L. 86-449, 74 Stat. 88, 42 U.S.C. 1974).

Title III of the Civil Rights Act of 1960, section 302 (P. L. 86-449, 74 Stat. 88, 42 U.S.C. 1974a).

Title III of the Civil Rights Act of 1960, section 303 (P. L. 86-449, 74 Stat. 88, 42 U.S.C. 1974b).

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Title III of the Civil Rights Act of 1960, section 305, (P. L. 86-449, 74 Stat. 88, 42 U.S.C. 1974d).

Title III of the Civil Rights Act of 1960, section 306, (P. L. 86-449, 74 Stat. 88, 42 U.S.C. 1974e).

Act No. 54, General Acts of Alabama 1959, p. 97, section 1.

FRCP 26(b).

They are printed in Appendix C, *infra*, pp. 11-15.

STATEMENT

The Attorney General of the United States through his agents made demand in writing served upon Petitioner Crum Dinkins to make available for inspection and copying the registration and voting records of the Montgomery County Board of Registrars relating to elections for Federal office (R. pp. 4,5).

On June 13, 1960, subsequent to the demand, the Attorney General of the United States made application for the production of said records by court order for the purpose of inspecting, reproducing, or copying them (R. p. 2).

The application was filed in the United States District Court for the Middle District of Alabama.

The Petitioners, among other pleadings and motions, filed Motion to Dismiss the Application, and also Answer and Cross-Complaint (R. pp. 24, 25).

The Motion to Dismiss was denied, and the Court granted Respondent's Motion to Strike and Dismiss the Cross-Complaint (R. pp. 124, 125).

The Court then granted the Application of Respondent and ordered the Petitioners to make available to the Attorney General of the United States and/or his authorized agents all records and papers in Petitioner's possession or control relating to any application, registration, payment of poll tax, or other act requisite to voting in any general,

special, or primary election in which Federal officers are voted for. The records were to be available for inspection, reproduction, and copying at the office of the registrars in Montgomery, Alabama (R. pp. 124, 125, 126).

A stay of this Order pending appeal was denied by the District Court and after the Chief Judge of the Court of Appeals granted a temporary stay, a three-judge panel of that Court refused a further stay.

Thereafter, and pending the appeal, the Government sought and obtained from the District Court an Order (Appendix D) on September 30, 1960, requiring the Registrars to make their records available for inspection, reproduction, and copying commencing October 4, 1960, which Order was complied with.

All of the above proceedings were in connection with the alleged authority of the Appellee to proceed under the applicable provisions of the Civil Rights Act of 1960.

The Court of Appeals affirmed the action taken by the District Court in a per curiam opinion (R. 185-187).

REASONS FOR GRANTING THE WRIT

1. In the case of *United States of America v. State of Alabama*, 362 U.S. 602, 4 L. Ed. 2d 982, 80 S. Ct. 924, this Court expressly reserved to the State of Alabama the right to contest the constitutionality of the Civil Rights Act of 1960, or make any other defenses that may be asserted to the State.

The questions presented are important questions of federal law which have not been, but should be, settled by this Court, inasmuch as they are constantly arising in other cases and affect the voter registration processes in every State in the Union. The broad powers given to the Attorney General of the United States by Title III of the Civil Rights Act of 1960 were not before the Court in the case of *United States v. Raines*, 362 U.S. 17, 4 L. Ed. 2d 524, 80 S. Ct. 519, since the Civil Rights Act of 1960 had not been enacted at the time of that decision.

2. In our view, the courts below have incorrectly decided the issues raised by the Appellants.

Basically, we contend that the several sections of Title III of the Civil Rights Act of 1960 are unconstitutional or do not constitute appropriate legislation in that they either run contrary to or are not authorized by the provisions of the Constitution, specifically Article I, Section 9, Clause 3 (dealing with ex post facto laws); Amendment IV (dealing with unreasonable searches and seizures); Amendment V (dealing with due process of law); Amendment VI (dealing with the right of confrontation); Amendment X (dealing with reserved powers); and Amendment XV (dealing with the right to vote).

A. Title III attempts to vest the Attorney General of the United States with the kind of "accusatory function" which was condemned by Mr. Justice Frankfurter in his separate opinion in *Hannah v. Larche*, 363 U.S. 420, 486; 4 L. Ed. 1307, 1352, in that powers attempted to be conferred on the Attorney General are part of a process that may lead to criminal prosecution or an adjudication by a court that the registrars have engaged in the practice of depriving persons of their right or privilege to vote because of race or color. In so doing, Title III constitutes ex post facto legislation, allows unreasonable searches and seizures, violates due process of law, denies the accused the right of confrontation, invades the powers reserved to the States or to the people, and is not appropriate legislation under the XVth Amendment.

B. Title III is couched in such vague, uncertain and indefinite terms as to make it inoperative and void. The provision therein for the retention of certain records and papers for a period of 22 months is not clear as to when the period of 22 months commences. In addition, the registration laws of Alabama (Title 17, Section 31, Code of Alabama 1940, as amended by the 1959 Acts of Alabama, p. 97) permit the Board of Registrars to destroy applications of unsuccessful applicants thirty days after such applications are denied. Under this state of facts, a Board of Registrars conceivably could have destroyed the applications of unsuccessful applicants prior to the time of demand being made for such records and papers by the Attorney General of the United States. This could be done in all innocence, because the Registrars could not be expected to anticipate when, or even if, the At-

torney General would ever demand the right to inspect, reproduce, and copy such records and papers.

There should be definity in a statute which involves possible criminal consequences.

C. The demand (R. 4) and the Order and Judgment (R. 125) are too broad in that although Section 303 of Title III required only records required by Section 301 to be retained, the demand (R. 4) and the Order and Judgment (R. 125) required the production of *"all records and papers"* in the custody of the Board relating to applications, etc., requisite to voting in certain elections, which could mean records kept from time immemorial. The Act did not authorize such a demand or Order and Judgment, and they are void.

3. We further contend that the Courts below erred in refusing to require the Respondent to answer interrogatories 9, 10 and 11 (R. 20).

Under the authority of *Bell v. Swift & Co.* (1960), 283 F. 2d 407, a party may be compelled to disclose the names and addresses of persons having knowledge of relevant facts. FRCP 26(b).

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

MacDonald Gallion
Attorney General
of Alabama

Willard W. Livingston
Chief Assistant Attorney
General of Alabama

Leslie Hall
Assistant Attorney
General of Alabama

Gordon Madison
Assistant Attorney
General of Alabama

March ....., 1961.

APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

FILED
AUG 11 1960
R. C. DOBSON
Clerk

By _____
Deputy Clerk

IN RE CRUM DINKINS, MRS. ROBERT S. LAMPLEY, GEORGE PENTON, MEMBERS OF THE BOARD OF REGISTRARS, MONTGOMERY COUNTY, ALABAMA	)	CIVIL ACTION NO. 1619-N

ORDER

This cause is now submitted upon the motion of Crum Dinkins, Mrs. Robert S. Lampley and George Penton as members of the Board of Registrars of Montgomery County, Alabama, seeking to have this Court strike the application of the Attorney General of the United States for an order to require the production of records for inspection; and this cause is also submitted upon the motion of said members of the Board of Registrars seeking to have this Court dismiss this proceeding.

This cause is also submitted upon the motion of the applicant, the Attorney General of the United States, to strike and dismiss the cross complaint filed herein on July 6, 1960, by said members of the Board of Registrars of Montgomery County, Alabama.

Upon consideration of said motions and for the reasons set forth in the memorandum opinion made and filed herein on this date, and for good cause shown, it is the ORDER

JUDGMENT and DECREE of this Court that the motion of Crum Dinkins, Mrs. Robert S. Lampley and George Penton as members of the Board of Registrars of Montgomery County, Alabama, seeking to have this Court strike the application for an order to require the production of records for inspection, be and the same is hereby overruled and denied. It is the further ORDER, JUDGMENT and DECREE of this Court that the motion of said registrars seeking to have this Court dismiss this action be and the same is hereby overruled and denied.

It is the further ORDER, JUDGMENT and DECREE of this Court that the motion of the applicant, the Attorney General of the United States, seeking to have this Court strike and dismiss the cross complaint filed by said Board of Registrars herein on July 6, 1960, be and the same is hereby granted.

Done, this the 11th day of August, 1960.

FRANK M. JOHNSON, JR.,
United States District Judge.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 18562

CRUM DINKINS, MRS. ROBERT S. LAMPLEY, and GEORGE PENTON, as Members of the Board of Registrars of Montgomery County, Alabama,

Appellants,

versus

THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL,

Appellees,

No. 18585

STATE OF ALABAMA, Ex Rel. MacDonald Gallion as Attorney General of Alabama

Appellant,

WILLIAM P. ROGERS, Attorney General of the United States, ET AL,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama

(January 23, 1961)

2 *Dinkins, et al, v. The Atty Genl. of the U.S., et al.*

Before TUTTLE, Chief Judge, Jones, Circuit Judge, and MIZE, District Judge.

PER CURIAM: The judgments of the trial court in these two cases consolidated for hearing on the trial, are hereby affirmed on the basis of the well reasoned opinion by the trial court. 187 F. Supp. 848.

AFFIRMED.

(Seal)
A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By Gilbert F. Ganucheau
Deputy

New Orleans, Louisiana

FEB 1 1961

Adm. Office, U.S. Courts, E. S. Upton Printing Co.,
New Orleans, La.

JUDGMENT

Extract from the Minutes of January 23, 1961.

CRUM DINKINS, MRS. ROBERT S. LAMPLEY and GEORGE PENTON, as Members of the Board of Registrars of Montgomery County, Alabama,

No. 18562.

versus

THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

This cause came to be heard on the transcript of the record for the Middle District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by the Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

APPENDIX C

Constitution of the United States:

Article I, Section 9, Clause 3. No Bill of Attainder or ex post facto Law shall be passed.

Amendment IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

Amendment V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XV, Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Tttle III of the Civil Rights Act of 1960, section 301 (P. L. 86-449, 74 Stat. 88, 42 U.S.C. 1974). Retention and preservation of records and papers by officers of election; deposit with custodian; penalty for violation.

Every officer of election shall retain and preserve for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner of the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Title III of the Civil Rights Act of 1960, section 302 (P. L. 86-449, 74 Stat. 88, 42 U.S.C. 1974a). Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties.

Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates or alters any record or paper required by section 1974 of this title to be retained and preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Title III of the Civil Rights Act of 1960, section 303 (P. L. 86-449, 74 Stat. 88, 42 U.S.C. 1974b). Demand for records or papers by Attorney General or representative; statement of basis and purpose.

Any record or paper required by section 1974 of this title to be retained and preserved shall, upon demand in writing

by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

Title III of the Civil Rights Act of 1960, section 304, (P. L. 86-449, 74 Stat. 88, 42 U.S.C. 1974c). Disclosure of records or papers.

Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General shall disclose any record or paper produced pursuant to this subchapter, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

Title III of the Civil Rights Act of 1960, section 305 (P. L. 86-449, 74 Stat. 88, 42 U.S.C. 1974d). Jurisdiction to compel production of records or papers.

The United States district court for the district in which a demand is made pursuant to section 1974b of this title, or in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

Title III of the Civil Rights Act of 1960, section 306 (P. L. 86-449, 74 Stat. 88, U.S.C. 1974e). Definitions.

As used in this subchapter, the term "officer of election" means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

Act No. 54. General Acts of Alabama 1959, page 97, section 1.

"Section 31. The board of registrars shall have power to examine, under oath or affirmation, all applicants for registration, and to take testimony touching the qualifications of such applicants. In order to aid the registrars to judicially determine if applicants to register have the qualifications to register to vote, each applicant shall be furnished by the board a written questionnaire, which shall be uniform in all cases with no discrimination as between applicants, the form and contents of which questionnaire shall be prescribed by the Supreme Court of Alabama and be filed by such court with the Secretary of State of the State of Alabama. The questionnaire shall be so worded that the answers thereto will place before the registrars information necessary or proper to aid them to pass upon the qualifications of each applicant. The questionnaire shall be answered in writing by the applicant, in the presence of the board without assistance. There shall be incorporated in such answer an oath to support and defend the constitution of the United States and the constitution of the State of Alabama and a statement in such oath by the applicant disavowing belief in affiliation at any time with any group or party which advocated the overthrow of the government of the United States or the State of Alabama by unlawful means. The answers and oath shall be duly signed and sworn to by the applicant before a member of the board. If solely because of physical handicaps the applicant is unable to read or write, then he shall be exempt from the above stated requirements which he is unable to meet because of such physical handicap, and in such cases a member of the board shall read to the applicant the questionnaire and oath herein provided for and the applicant's answers thereto shall be written down by such board member and the applicant shall be registered as a voter if he meets all other requirements herein set out. Each member of the board is authorized to administer the oaths to be taken by applicants and witnesses. The questionnaires and written answers of persons applying for registration shall not become public records as public records are defined under the laws of the state of Alabama, nor shall the board disclose the information contained in such questionnaires and written

answers, except with the written consent of the person who filed the answer or pursuant to a court of competent jurisdiction in a proper proceeding. Such questionnaires and the answers of applicants shall be preserved by the board for a period of thirty days, after denial after which, if no appeal has been taken as provided in section thirty-five of this title, they shall be kept with the records of the board of registrars or disposed of in such manner as the board may direct."

FRCP 26 (b). Scope of Examination. Unless otherwise ordered by the court as provided by Rule 30(b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discoverey of admissible evidence. As amended Dec. 27, 1946, effective March 19, 1948.

APPENDIX D

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

IN RE CRUM DINKINS, MRS. ROBERT S. LAMPLEY, GEORGE PENTON, MEMBERS OF THE BOARD OF REGISTRARS, MONTGOMERY COUNTY, ALABAMA	)	CIVIL ACTION NO. 1619-N

ORDER

This cause is now submitted upon the motion of the Attorney General of the United States filed herein on September 26, 1960, seeking to have this Court designate a date for the Board of Registrars of Montgomery County, Alabama, to produce the records concerned in this litigation for the inspection, reproduction and copying by the agents of the Attorney General of the United States. This cause is also submitted upon the motion of the Attorney General of Alabama seeking to have this Court authorize him and/or his assistants to be present during said inspection of said records.

After conferring with the attorneys representing all parties concerned and after conferring with the representatives of the investigative agency of the Attorney General of the United States, this Court is of the opinion that it will be convenient with all parties concerned for the inspection, copying and reproduction of the records referred to in the order of this Court of August 11, 1960 and filed herein on that date, to commence at 10:00 a.m., Tuesday, October 4, 1960, and to continue from day to day thereafter until the inspection, reproduction and copying of said records shall be completed.

This Court is also of the opinion that since the legal problems have been resolved in this matter up to this point, there is no necessity for any of the attorneys interested in this litigation to be present during said inspection, reproduction and copying of such records. This Court considers that it is only appropriate for the investigating officers,

representing the Attorney General of the United States, and the members of the Board of Registrars, or their regular employees, to be present during such inspection, reproduction and copying of such records.

It is, therefore, the ORDER, JUDGMENT and DECREE of this Court that the inspection by the Attorney General of the United States and/or his authorized representatives; of all records and papers in the custody, possession or control of Crum Dinkins, Mrs. Robert S. Lampley and George Penton, as Registrars of Montgomery County, Alabama, and/or their successors in office, as those records relate to any application, registration, payment of poll tax, or other act requisite to voting in any general, special or primary election in which candidates for the office of President, Vice President, Presidential Elector, Member of the Senate or Member of the House of Representatives of the United States are voted for, commence at 10:00 a.m., Tuesday, October 4, 1960, at the office of the Montgomery County Board of Registrars, Montgomery County, Alabama, and continue from day to day thereafter for such period as may be reasonable necessary to complete such inspection, reproduction and copying.

It is the further ORDER, JUDGMENT and DECREE of this Court that the motion of the Attorney General of Alabama, seeking permission of this Court to be present during the inspection, reproduction and copying of the records concerned in this litigation, be and the same is hereby denied.

Done, this the 30th day of September, 1960.

/s/ Frank M. Johnson, Jr.

UNITED STATES DISTRICT JUDGE

Nos. 823, 824

In the Supreme Court of the United States

OCTOBER TERM, 1960

CRUM DINKENS, ET AL., PETITIONERS

v.

THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

STATE OF ALABAMA, EX REL. MACDONALD GALLION AS ATTORNEY GENERAL OF ALABAMA, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
BURKE MARSHALL,
Assistant Attorney General,
HAROLD H. GREENE,
GERALD P. CHOPPIN,
Attorneys,
Department of Justice, Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 823

CRUM DINKENS, ET AL., PETITIONERS

v.

THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL.[1]

No. 824

STATE OF ALABAMA, EX REL. MACDONALD GALLION AS ATTORNEY GENERAL OF ALABAMA, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court is reported at 187 F. Supp. 848. The opinion of the court of appeals (D. Pet. 9–10; G. Pet. 10–11)[2] is reported at 285 F. 2d 430.

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[1] This is the caption of this case as it appears in the opinion and order of the court of appeals (D.R. 185, 187). Petitioners have used a somewhat different caption here (*Crum Dinkins, et al.* v. *William P. Rogers, As Attorney General of the United States, (Robert F. Kennedy, successor in office)*.

[2] "D. Pet." and "D.R." refer to the petition and record in No. 823 (the *Dinkens* case). "G. Pet." and "G.R." refer to the petition and record in No. 824 (the *Gallion* case).

JURISDICTION

The judgment of the court of appeals was entered on January 23, 1961 (D.R. 187; G.R. 139). The petitions for writs of certiorari were filed on March 17, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

No. 823, the *Dinkens* case

1. Whether Title III of the Civil Rights Act of 1960 is constitutional.

2. Whether the Attorney General's demand for records complied with the Act.

No. 824, the *Gallion* case

1. Whether a state court has jurisdiction to enjoin the Attorney General of the United States from performing his duties under the Civil Rights Act of 1960.

2. Whether a single federal judge may decide such a question of jurisdiction in a case which has been removed from a state court.

STATUTE INVOLVED

Title III of the Civil Rights Act of 1960 (74 Stat. 86) provides:

> SEC. 301.—Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico

are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 302.—Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 301 to be retained and preserved shall be fined not more that $1,000 or imprisoned not more than one year, or both.

SEC. 303.—Any record or paper required by section 301 to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

SEC. 304.—Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

SEC. 305.—The United States district court for the district in which a demand is made pursuant to section 303, or in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

SEC 306.—As used in this title, the term, "officer of election" means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

STATEMENT

On May 9, 1960, the Attorney General of the United States, acting pursuant to Section 303 of the Civil Rights Act of 1960, *supra*, presented to the Board of Registrars of Wilcox County, Alabama, a written

demand requesting the Board to make available for inspection and copying its registration and voting records relating to election for federal office (G.R. 21). On May 23, 1960, a similar demand was made upon the Board of Registrars of Montgomery County, Alabama (D.R. 4–5; G.R. 19).

On June 6, 1960, the Attorney General of Alabama commenced the *Gallion* case (No. 824) by seeking and obtaining from the Circuit Court of Montgomery County, Alabama, a temporary injunction and restraining order forbidding the Attorney General of the United States, and his "agents, servants, employees and attorneys * * *" to inspect or copy the records and papers in the possession, custody and control of the "several Boards of Registrars of the various counties of Alabama, under the color of authority purportedly given * * * by the 'Civil Rights Act of 1960'" (G.R. 22–25). The state court's injunction was predicated upon allegations that the Civil Rights Act of 1960 is unconstitutional and void (G.R. 3–18). On June 11, 1960, respondents in the *Gallion* case, acting pursuant to 28 U.S.C. 1442, removed the state court action to the District Court for the Middle District of Alabama (G.R. 26–33) and subsequently moved to dismiss the complaint. On July 6, 1960, petitioner in the *Gallion* case filed a motion to remand the case to the Circuit Court for Montgomery County, Alabama (G.R. 40–41).

On June 13, 1960, following the refusal of the Board of Registrars of Montgomery County to comply with his demand for production, the Attorney General of the United States began the *Dinkens* case

(No. 823) by applying to the District Court for the Middle District of Alabama, under Section 305 of the Civil Rights Act of 1960, for an order requiring the production of the election records for inspection, reproduction, and copying (D.R. 2). Petitioners in the *Dinkens* case submitted a counterclaim demanding that the court strike and dismiss the Attorney General's application and enjoin the Attorney General from proceeding under Title III of the Act (D.R. 23, 25).

Because of their common issues on the merits, the two cases were consolidated and, on July 13, 1960, argument was heard on both. On August 11, 1960, the district court entered judgment. In the *Dinkens* case, it dismissed the cross-complaint and ordered compliance within fifteen days with the demand of the Attorney General for production of the records (D.R. 113, 124, 125). In the *Gallion* case, it denied petitioner's motion for a remand and granted respondent's motion to dismiss the suit (G.R. 108–119). The court of appeals affirmed *per curiam* (D.R. 187; G.R. 139).

ARGUMENT

The *Dinkens* case

1. Petitioners contend (D. Pet. 5–6) that Title III of the Civil Rights Act of 1960, *supra*, pp. 2–4, is unconstitutional for a multitude of reasons. All of these contentions are plainly without merit.

First, the Act, in requiring the production of records with regard to federal elections, is clearly within the power given Congress by Article I, Section 4, of the Constitution. See *Ex parte Siebold*, 100 U.S. 371;

In re Coy, 127 U.S. 731. Since it is designed to prevent discrimination in voting rights because of color, it is also clearly appropriate legislation to effectuate the Fourteenth and Fifteenth Amendments. As was said in *In re Wallace*, 170 F. Supp. 63, 67 (M.D. Ala.), with respect to the congressional grant of subpoena power to the Commission on Civil Rights, "The provision in the Act providing for investigation of alleged discriminatory practices, including inspection of voting and other pertinent records, must be considered an essential step in the process of enforcing and protecting the right to vote regardless of color, race, religion, or national origin." Data from voting records has been used many times as evidence to prove racial discrimination in the voting process. See, *e.g.*, *Davis* v. *Schnell*, 81 F. Supp. 872 (S.D. Ala.), affirmed, 336 U.S. 933; *Byrd* v. *Brice*, 104 F. Supp. 442 (W.D. La.), affirmed, 201 F. 2d 664 (C.A. 5); *United States* v. *Raines*, decided September 13, 1960 (M.D. Ga.); *United States* v. *Alabama*, decided March 17, 1961 (M.D. Ala.)

Second, Title III cannot possibly constitute *ex post facto* legislation, since it provides no criminal penalties for past conduct. Punishment may not be imposed only for disobedience of a court order to produce election records or for destruction of election records after passage of the Act. See *United States* v. *Association of Citizens Councils*, 187 F. Supp. 846, 847–848 (W.D. La.).

Third, petitioners were not deprived of any constitutional right of cross-examination and confrontation in this proceeding. This Court rejected a similar

argument in *Hannah* v. *Larche*, 363 U.S. 420,[3] even though in that case the Commission on Civil Rights was attempting to compel the testimony of witnesses, whereas here the Attorney General sought only the production of records belonging, not to the registrars, but to the state. Cf. *Wilson* v. *United States*, 221 U.S. 361, 380; *United States* v. *White*, 322 U.S. 694. To our knowledge, it has never been held or even been seriously suggested that, before a demand for governmental records can be enforced, the custodian is entitled to a trial at which he may cross-examine the persons whose information possibly contributed to the decision to make the demand.[4]

Fourth, Title III is not unconstitutionally vague and indefinite because, as petitioners allege, it is not clear when the twenty-two month period for retaining election records, provided for in Section 301, begins. That section clearly states that papers covered by the Act have to be retained from the time they are received until twenty-two months after the date of any

[3] The suggestion was made below that, since the Attorney General, unlike the Commission on Civil Rights, also exercises an "accusatory function," *Hannah* v. *Larche* does not apply. But, as the district court held, this Court in the *Hannah* case was "distinguishing *not* between agencies having prosecutive functions and those not having such functions, but rather between *investigations* and *adjudications*, regardless of the agency involved" (emphasis in original). 187 F. Supp. at 854.

[4] This disposes also of the point (D. Pet. 6) that the district court erred in refusing to require respondents to answer certain interrogatories. Those interrogatories (D.R. 20) sought to elicit the names of any person who might have complained to the Department of Justice concerning respondents' conduct of the Montgomery County registrar's office.

federal election to which they apply (see *supra*, pp. 2-3). Alabama law, which permits the destruction of unsuccessful applications thirty days after their denial, must, of course, yield to the requirements of federal law. *United States* v. *Murdock*, 284 U.S. 141.

2. Petitioners further contend (D. Pet. 6) that the Attorney General's demand and the district court's order of enforcement are too broad because they refer to "all records and papers" in the custody of the respondents relating to federal elections (D.R. 4, 125), "which could mean records kept from time immemorial" (D. Pet. 6). Both the demand and the order, however, were confined to "records and papers * * * relating to any application * * * or other act requisite to voting in any * * * election in which (federal) candidates * * * *are* voted for" (emphasis added) (D.R. 4, 126). Thus, they cover only those records pertaining to persons who either are or might be eligible to vote in *current* federal elections. Since Alabama has a system of permanent registration, the registration data of the earliest living registered voter is as current as that of the newly-registered voter. In like manner, the rejected applications of living persons who might otherwise be voters are current. Thus, neither the demand nor the order reaches back any further than those records which are pertinent to the protection of present voting rights.

The *Gallion* case

1. Petitioner contends (G. Pet. 4-5) that the state court had jurisdiction to enjoin the Attorney General from proceeding under the Civil Rights Act of 1960,

and that therefore the district court erred in granting respondent's motion to dismiss.[6]

First, it is well settled that state courts are without power to interfere with the conduct of federal officials acting under federal law. See, *e.g., Tarble's Case,* 13 Wall. 397; Warren, *Federal and State Court Interference,* 43 Harv. L. Rev. 345 (1930). Section 303 of the Civil Rights Act of 1960, *supra,* p. 3, expressly authorizes the Attorney General to demand that state election officials make available election records to him or his representative for inspection, reproduction, and copying. Section 305 of that Act provides that, after such a demand has been made, the federal district courts have jurisdiction to enforce these demands. The injunction which petitioner sought from the state court would have prevented the Attorney General from proceeding under Sections 303 and 305 by forbidding him from inspecting, reproducing, or copying the election records. Clearly, this would be a serious and direct interference with the Attorney General's performance of his duty under the Act.

Second, state courts have no concurrent jurisdiction in cases arising under federal law when such jurisdiction is prohibited by express provision or "by incompatibility in its exercise arising from the

[6] Petitioner also claims (G. Pet. 5) that the district court should have remanded the case to the state court. But 28 U.S.C. 1442 expressly provides that a civil action brought against a federal official in a state court is removable to the federal courts. See *De Busk* v. *Harvin,* 212 F. 2d 143 (C.A. 5).

nature of the particular case." *Claflin* v. *Houseman*, 93 U.S. 130, 136. Such incompatibility is particularly patent here. The Civil Rights Act of 1960 was designed to protect the constitutional rights of citizens from denial or abridgement by state action. It would be incongruous if the power of enforcement—and of interference—were possessed by a state court, that is, by the very entity with whose conduct the legislation is concerned. Moreover, the enforcement procedure in Section 305 is a full and complete remedy with respect to any legitimate claims the recipient of a demand for production may have. Where Congress has provided a special judicial procedure, relief ordinarily may be had only through that procedure. Cf. *Galveston, Harrisburg & San Antonio Railway Co.* v. *Wallace*, 223 U.S. 481, 490; *Lichter* v. *United States*, 334 U.S. 742, 789–793; *Lockerty* v. *Phillips*, 319 U.S. 182, 188; *Eastern States Petroleum Corp.* v. *Rogers*, 280 F. 2d 611 (C.A. D.C.).

2. Petitioner also contends (G. Pet. 5, 7) that 28 U.S.C. 2282 required the convening of a three-judge court.[6] But 28 U.S.C. 2282 requires only that a three-judge court be convened to consider whether to grant an injunction against the enforcement of a federal act. The statute does not require that preliminary questions such as the standing of the plain-

[6] Petitioner raised this point in *Gallion* only in oral argument before the district court.

tiffs (*Washington Water Power Co.* v. *City of Coeur d'Alene*, 24 F. Supp. 790, 793 (D. Idaho)), the lack of a justiciable controversy (*Western Ass'n of Lumbermen & Loggers* v. *Krug*, 79 F. Supp. 344, 346–347 (D. Ore.)), or jurisdiction, must be decided by a three-judge court. The district judge dismissed petitioner's action on the ground that the state court was without jurisdiction to hear and dispose of the complaint. For the jurisdiction of a federal court depends on the jurisdiction of the state court from which the case was removed. *Lambert Run Coal Co.* v. *Baltimore & Ohio R. Co.*, 258 U.S. 377.

Even if the state court's lack of power to issue a complaint were considered as going to the constitutional merits of the action rather than to its jurisdiction, the district judge nevertheless correctly dismissed the action. As we have shown (pp. 9–11), the state court clearly was without power to enjoin the Attorney General from performing his duty under federal law. Since no substantial constitutional problem was involved, the district judge was not required to convene a three-judge court. See, *e.g.*, *Ex parte Poresky*, 290 U.S. 30, 32.[7]

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[7] Petitioner in *Gallion* also raises (G. Pet. 5–7) the same substantive contentions as are involved in the *Dinkens* case. Since, however, the district court had no jurisdiction over the *Gallion* case, these substantive issues were not reached. In any event, these contentions are without merit (see *supra*, pp. 6–9).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petitions for writs of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
BURKE MARSHALL,
Assistant Attorney General.
HAROLD H. GREENE,
GERALD P. CHOPPIN,
Attorneys.

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